

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ROGER REDFORD</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 192,613
<b>ANR FREIGHT SYSTEM</b>	)	
Respondent	)	
AND	)	
	)	
<b>PLANET INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

On September 17, 1996, the claimant's Application for Workers Compensation Board Review of the May 1, 1996 Award by Administrative Law Judge Steven J. Howard, came on for hearing in Kansas City, Kansas.

**APPEARANCES**

Claimant appeared by his attorney, Davy C. Walker of Kansas City, Kansas. The respondent and its insurance carrier appeared by their attorney, David M. Druten of Kansas City, Kansas.

**RECORD AND STIPULATIONS**

The record considered by the Appeals Board and the stipulations of the parties are listed in the Award.

**ISSUES**

The Administrative Law Judge denied benefits to claimant based upon a finding that claimant was not disabled for a period of at least one week as required by K.S.A. 44-501(c). The issue is whether the provisions of S.B. 649 amending K.S.A. 44-501(c) should be applied retroactively.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant was injured March 1, 1994. The parties agree that claimant missed 2 ½ days from work as a result of his injuries suffered in the work-related accident. The Administrative Law Judge found that the version of K.S.A. 44-501(c) in effect on March 1, 1994 required an employee to be disabled from work for at least one week before the employer can be liable for workers compensation benefits other than medical compensation. In so finding, the Administrative Law Judge followed the holding of the Kansas Court of Appeals in Boucher v. Peerless Products, Inc., 21 Kan. App. 2d 977, 911 P.2d 198 (1996), rev. denied, 260 Kan. \_\_\_\_ (1996) which held that:

“Under the plain and unambiguous language of K.S.A. 44-501(c), where an injury does not disable the employee for a period of at least 1 week from earning full wages at the work at which the employee is employed, the employer is liable only for the medical expenses incurred by the employee, there being no loss of wages or compensation to the employee.” Syl. ¶ 2

The Administrative Law Judge noted that K.S.A. 44-501(c) was amended by the 1996 Kansas Legislature in S.B. 649 which became law upon its publication in the Kansas Register on April 4, 1996. L. 1996, Ch. 79, §§1 and 2. That amendment struck the requirement that an employee be disabled from earning full wages at work for at least one week before the employer can be liable for other than medical compensation under the Workers Compensation Act. In referring to the 1996 amendment to K.S.A. 44-501(c) and S.B. 649 the Administrative Law Judge found:

“Hence, the Kansas legislature clearly intends to delete the prohibition against collecting permanent partial disability where a claimant losses (sic) less than one week of work following occupational injury. The Administrative Law Judge specifically finds the deleted provision to be substantive in nature, and as such, is not relevant to an accident on March 1, 1994.”

New Section 2 of Chapter 79, 1996 Session Laws of Kansas, amends K.S.A. 44-501 to specifically provide the following:

“The provisions of K.S.A. 44-501, as amended by section 1 of this act, shall apply to any claim brought under the Kansas workers compensation act for an injury which occurred prior to the effective date of this act, unless the claim has been fully adjudicated.”

Respondent states in its brief that “the constitutionality of such retroactive application depends on whether the elimination of the requirement of missing at least one week of work due to a work related disability is a procedural or substantive law change.” Respondent argues that the finding by the Administrative Law Judge should be affirmed because the change in the law is substantive and, therefore, cannot be applied retroactively, citing Jackson v. American Best Freight System, Inc., 238 Kan. 322, 709 P.2d 983 (1985).

The Appeals Board disagrees with the Administrative Law Judge and respondent that the issue of whether the 1996 amendments to K.S.A. 44-501(c) are to be applied retroactively depends upon whether the changes are procedural or substantive in nature. The Kansas Supreme Court in Jackson utilized the procedural versus substantive analysis in determining the retrospective operation of a change of law where the legislative intent was not otherwise expressed. However, as the Court specifically states, a statutory amendment will be given retrospective application where it appears that such was the legislative intent. In the Jackson case the statutory amendment contained no language that indicated that the legislature intended for the statute to operate retroactively. Therefore, the Court applied the rule that an amendment which creates a new liability not existing before under the law or which changes the substantive rights of the parties operates prospectively. In such circumstances only a procedural statute can be applied retroactively. Nevertheless, the Court in Jackson upheld the right of the legislature to provide for the retroactive operation of an amendment where the legislative intent is clearly indicated, citing Davis v. Hughes, 229 Kan. 91, 622 P.2d 641 (1991). Given the legislature’s clear intent that its amendment to K.S.A. 44-501 should apply retroactively, the finding by the Administrative Law Judge should be reversed.

Respondent, in its brief to the Appeals Board, contends that the attempt in Section 2 of S.B. 649 to make the amendments to K.S.A. 44-501(c) retroactive is unconstitutional. With respect to the retroactive application of the amendment, respondent contends that:

“Any attempt to deprive the respondent of a vested right or defense which existed prior to the effective date of the statute would be improper and unconstitutional.”

The Administrative Law Judge properly did not address the constitutionality of the statute and neither will the Appeals Board. The Appeals Board has held that administrative

agencies are generally not empowered to determine the constitutionality of a statute. See, Gates v. Brighton Painting Company & CNA Insurance Company, Docket No. 181,593, opinion filed December 6, 1994. The constitutionality of a statute is presumed, and all doubts must be resolved in favor of its validity. See, In re, Marriage of Soden, 251 Kan. 225, 834 P.2d 358 (1992).

The Appeals Board finds that K.S.A. 44-501(c), as amended by S.B. 649, is applicable to this claim. This matter should, therefore, be remanded to the Administrative Law Judge for a determination of the remaining issues.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the May 1, 1996 Award by Administrative Law Judge Steven J. Howard should be, and is hereby, reversed and remanded to the Administrative Law Judge with directions that an Award be entered in accordance with the findings and conclusions enumerated herein.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Davy C. Walker, Kansas City, KS  
David M. Druten, Kansas City, KS  
Steven J. Howard, Administrative Law Judge  
Philip S. Harness, Director